

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

CRL.A.No. 786 of 2006 ()

AGAINST THE JUDGMENT IN CC 46/2002 of J.M.F.C.-I,PATHANAMTHITTA DATED
31-10-2005

APPELLANT/COMPLAINANT:

V.PAPPY, ADENATH,
VETTIPURAM, PATHANAMTHITTA.

BY ADVS.SRI.JOHN BRITTO
SRI.C.A.RAJEEV

RESPONDENT/ACCUSED 1, 2, 5 AND STATE:

1. K.ANIL KUMAR,
RAMAMANGALATHU VEEDU, PERINGAMALA, VETTIPURAM
PATHANAMTHITTA.
2. PETER KUNJUMON,
OTTAPLAVANANILKKUNNATHIL, POOVANPARAMURUP, VETTIPURAM
PATHANAMTHITTA.
3. PRADEEP, KUZHIMANNIL VEEDU,
POOVANPARAMURUP, VETTIPURAM, PATHANAMTHITTA.
4. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R1 TO 3 BY ADV. SRI.S.MUHAMMED HANEEFF
R4 BY PUBLIC PROSECUTOR SMT. LILLY LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07-12-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.BHAVADASAN, J.

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Crl.A.No.786 of 2006

Dated this the 7th day of December, 2015

JUDGMENT

Cognizance of offence under sections 143, 147, 447 and 427 of the IPC was taken on a private complaint. After following the necessary procedures, summons was issued to the accused. They entered appearance. Copies of documents were supplied to them. It appears that initially there were six accused persons. Among them, after receiving summons A1, A2, A5 and A6 appeared before the court while A3 and A4 absconded. Later, they were released on bail.

2. The allegation was that, the property in relation to which offence is said to have been committed belonged to the daughter of the complainant. But, as she was not available in station, the property was being looked after by her father, PW1. The complaint was that under the guise of widening the road, the accused persons attempted to trespass into the property and in that process, cut and removed the trees standing in the property. For trial only A1, A2 and A5 had participated. A3 and A4

remained away from court and A6 died during the pendency of the proceedings. Charge was framed and the accused pleaded not guilty and therefore the complainant examined PWs 1 to 6 and had Exts.P1 to P5 marked.

3. After the close of complainant's evidence, the accused were questioned under Section 313 of the Cr.P.C, wherein, they denied the incriminating circumstances brought out in evidence against them and maintained that they are innocent. No defence evidence was adduced.

4. The court below, on appreciation of the evidence found it difficult to accept the version given by the complainant and holding that there was no proof of actual act said to have been committed by the accused persons, acquitted the accused. On materials before it, the court below came to the conclusion that it was the public road that was being widened and accusation levelled against the accused persons is without any basis.

5. On the basis of those findings, the accused who stood trial were acquitted. Assailing the said acquittal, this appeal has been filed, after obtaining leave of this Court.

6. The complaint, as could be discernible from the appeal

memorandum is that there has not been a proper appreciation of evidence in the case and that if evidence of PWs 1 to 3 and 6 were properly evaluated, it could have been seen that the complainant had proved his case. At any rate, the appellant contended that the acquittal is unwarranted.

7. After having gone through the judgment of the court below, this Court finds hardly any grounds to interfere with the order of the trial court. This Court must remind itself that it is sitting in appeal against an order of acquittal where the accused are armed with two presumptions. The first of which is that all persons are presumed to be innocent unless proved otherwise and the second, a court of law, after trial was found the accused innocent.

8. PW1's evidence is in support of his case. But however he in his deposition feigned ignorance about widening of the pathway by the Government officials. This, the court below found was in conflict with the pleadings in O.S.No.61 of 2000 where his complaint was regarding the widening of the road by the District Collector etc. The court below had also placed considerable reliance on the refer report filed by the police

highlighting that, there was no real grievance for the complainant and the accused had no role to play in the incident. The court below has analysed the evidence in considerable detail and the only evidence worthy of consideration was that of PW1, but that the court below has found, can be taken only with a pinch of salt. The court below, after going through the evidence of PW1 has found an opinion that there was a deliberate attempt on the part of PW1 to falsely implicate the accused persons.

After having re-evaluated the evidence, this Court finds that the finding entered into by the court below is a reasonable and proper one and it could not be said that it is either perverse or is based on irrelevant material. Merely because this Court can take a different view, but that by itself will not be a ground to interfere in appeal. For the above reasons this Court finds no reason to interfere with the order of the court below. This appeal is without any merit and is accordingly dismissed.

**P.BHAVADASAN,
JUDGE**